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Supreme Court, U.S.
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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

In Re Elizabeth A. Kalil,

Petitioner.

On Petition for Writ of Mandamus and Prohibition to the U.S. Court of Appeals for the Second Circuit

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PETITION FOR WRIT OF MANDAMUS AND PROHIBITION TO THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT, HON. DENNIS JACOBS, CHIEF JUDGE, HON. JOHN M. WALKER, JR., AND HON. GUIDO CALABRESI, CIRCUIT JUDGES

Elizabeth A. Kalil
Petitioner, *pro se*
8 Old Willow Rd.
New Hartford, NY 13413
(315)735-8866

QUESTIONS PRESENTED

1) Whether the Panel's withholding its non-discretionary duty to insure subject matter jurisdiction pursuant to the controlling non-bankruptcy US immigration law public regulatory scheme, 8 USC §1324b, as urged by Petitioner, warrants mandamus/prohibition?

2) Whether the Panel's suppression of substantial evidence of the non-existence of any 8 USC §1324b monetary liability/debt obligation against Petitioner, as was explicitly and tacitly determined in 2005 by the Court of exclusive and final jurisdiction, warrants mandamus/prohibition?

3) Whether Petitioner's clear and indisputable due process right to restore her ante adversary proceeding status quo -- non-monetary liability under 8 USC §1324b -- warrants mandamus/prohibition?

4) Whether the Courts' usurpation of jurisdiction and authority by interposing themselves into US immigration/employment legislation (8 USC §1324b) in excusing a publicly regulated US employer from compliance with said legislation's plain language, regulatory requisites, demands mandamus/prohibition?

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The manifest public policy wrongs of this matter are the consequence of the Courts' usurpation of jurisdiction and authority by interposing themselves into U.S. immigration law's public regulatory scheme (8 USC §1324b), which illicit acts constitute an unwarranted impairment of the executive branch in regulating U.S. employers by enforcing U.S. immigration law and protecting U.S. citizens..13

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PARTIES TO THE 11 U.S.C. §523 (a)(6)
BANKRUPTCY ADVERSARY PROCEEDING

Petitioner, Elizabeth A. Kalil was the defendant-appellant and the Utica City School District was the plaintiff (hereinafter "adversary-employer").

OPINIONS BELOW

The Summary Order of Respondent Second Circuit bankruptcy appellate review panel was entered on December 3, 2008 (**App. pg. 1-5**); Order denying panel rehearing was filed on February 3, 2009 (**App. pg. 6**); Order denying request to file *en banc* and stay the mandate was filed on March 3, 2009 (**App. pg. 7**). The deadline for filing in this Court was extended to July 6, 2009.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under Article III of the Constitution of the United States; 28 U.S.C. §1251 and U.S. Const., Amdt. 11; 28 U.S.C.§ 1651(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution Amendments V and XIV

Immigration Reform and Control Act (IRCA) 8 USC §1324b "General Penalty Provisions" Sec. 1324b Unfair Immigration-Related Employment Practices" enacted as an amendment to the Immigration and Nationality Act of 1952 ("INA")

United State Bankruptcy Code (1978) 11 U.S.C. §101 *et. seq.*

STATEMENT

Petitioner comes to this Court -- as she did on appeal to District Court and Respondent Second Circuit bankruptcy review panel -- a native born U.S. citizen constitutionally aggrieved by the legally and provably void subject matter jurisdiction of Bankruptcy Court over the 11 USC §523(a)(6) adversary proceeding brought against her in April 2004 by her former school district employer[1] alleging the existence of a $52,958.40 statutory debt obligation[2] against Petitioner naming said employer beneficiary and arising under U.S. immigration law's public regulatory scheme, 8 USC §1324b.[3]

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[1] *Utica City School District, Plaintiff v. Elizabeth A. Kalil, Defendant* NDNY Bankruptcy Court Adv. No. 04-80115.

[2] "Under the Bankruptcy Code [§101(12)], 'debt' means liability on a claim, and 'claim,'... is nothing more or less than an enforceable obligation..." *FCC v. Nextwave Personal Communications Inc.* citing e.g. *Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U.S. 522, 559.

[3] Complaint at #4: "Plaintiff's claim is for a debt arising from an order of the United States Department of Justice, Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer, dated December 18, 2003... pursuant to 8 U.S.C.§ 1324b."

From the initial filing of employer's adversary proceeding, defendant Petitioner has objected to the validity of employer-adversary's allegation of the existence of a debt, and put the Courts on notice of the legal bar to Bankruptcy Court's subject matter jurisdiction over said adversary proceeding. Petitioner's objection would have been unequivocally supported had the Courts' simply read the plain unambiguous language of the controlling non-bankruptcy regulatory scheme, 8 USC §1324b(j) "Court Enforcement of Administrative Orders" provision and acknowledged the documented non-existence of the regulatory liability requisite of an Article III Court enforcement decree issued/entered by any Article III Court against Petitioner (much less one naming this adversary-employer beneficiary of $52,958.40).

Further confirmation of the non-existence of any 8 USC §1324b debt obligation is found in Petitioner's

2005 8 USC §1324b(i) Second Circuit Petition for Review, *Kalil v. Department of Justice et al.*,[4] wherein said immigration regulatory panel did not issue or enter any discretionary "Enforcement Decree in Original Review" pursuant to 8 USC §1324b(j)(3) against Petitioner in any dollar amount whatsoever in favor of anyone.

Moreover, with the agency's filing of the record with the Second Circuit, that panel's 2005 non-money mandate made pursuant to 8 USC §1324b(i)(2) is the exclusive and final judgment on the only issue controlling and informing Bankruptcy Court's subject matter jurisdiction: the simultaneous non-existence of either Petitioner's monetary liability under 8 USC §1324b and adversary-employer's non-entitlement under the Bankruptcy Code, material facts definitively reinforced by the Second

[4] *Elizabeth A. Kalil v. United States Department of Justice, Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer; Utica City School District, Intervenor* 04-623ag (2d. Cir. 2005) cert. denied, 06-37 S. Ct. (2006) rehearing denied (2006).

Circuit's Letter[5] to Petitioner explicitly stating there to be no money judgment against her and by the Certified Docket[6] of said Petition for Review explicitly establishing:

A) the non-existence of any filing of a Petition for Article III Court Enforcement of any non-self executing executive agency/ALJ order(s) against Petitioner by 8 USC §1324b's designated federal regulator (US DOJ Special Counsel)[7];

B) the non-existence of any filing of a Cross-Petition for Article III Court Enforcement of any non-self executing executive agency/ALJ order(s) against Petitioner by adversary-employer (including the agency order attached to its adversary complaint by outside

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[5] APPENDIX pg. 8 - Second Circuit Letter - "... *a search of Court records (Acco file) has been completed. There is no 'money judgment' entered by this Court against you* [Petitioner]...". Letter is part of the record.

[6] Certified Docket is part of the record.

[7] 28 CFR 0.53 - U.S. Department of Justice Office of Special Counsel for Immigration-Related Unfair Employment Practices.

counsel and/or an entirely different agency order submitted to the respondent panel by inhouse counsel and/or the altered affirmance of the agency order as substituted by this bankruptcy review panel[8] and

C) the non-existence of the issuance/entry of any 8 USC §1324b(j)(3) Second Circuit discretionary "Enforcement Decree in Original Review" against Petitioner in any dollar amount whatsoever in favor of anyone whomsoever, including adversary-employer, nor did the Circuit grant adversary-employer its request for attorneys' fees and costs for its participation as an Intervenor in Petitioner's Petition for Review.

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[8] Here, adversary-employer's failure to file a cross-petition for enforcement speaks to the failure of this public employer to take any affirmative action on its behalf and reinforces the fraud of adversary's bankruptcy action while emphasizing its prohibited retaliatory motive against whistle-blowing Petitioner. *See* 8 USC §1324b(5) "Prohibition of Intimidation or Retaliation".

As a matter of law, the documented non-existent "$52,958.40 debt obligation" is the absolute subject matter jurisdictional bar to the adversary proceeding; to Bankruptcy Court's issuance of orders therein, including granting adversary-employer's request for a order of "*dismissal without prejudice*" on July 19, 2006 and advising counsel,

> ...you're simply...reserving your [future] rights to do whatever you deem appropriate ... and shouldn't be bound by anything that happens ... [here] [9]

and to both Appellate Courts' issuance of affirmations premised on the Bankruptcy Court's non-existent subject matter jurisdiction derived from Petitioner's fictional liability under U.S. immigration law 8 USC §1324b, as well as the Courts' denial of Petitioner's Rule 11 request for sanctions against employer-adversary based on its fraud.

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[9] Petitioner's November 8, 2007 Principal 2nd Cir. Brief , pg. 19-20 .

Despite defendant Petitioner's urgent requests, not one of the six seasoned jurists before whom this matter has come will exercise their non-discretionary legal obligation of jurisdictional self-examination in context of the reality of the non-existent 8 USC §1324b debt obligation and afford this *pro se* Petitioner any due process consideration of her objections and/or pleadings and the consequential Constitutional and statutory rights withheld from her.

I am here because Mandamus/Prohibition is the only appropriate remedy, needed in this case of exceptional circumstances, to right the Constitutional and public policy wrongs and to rectify the Courts' *mal fides*.

REASONS FOR GRANTING PETITION

THE PANEL WITHHELD ITS NON-DISCRETIONARY DUTY TO INSURE SUBJECT MATTER JURISDICTION PURSUANT TO THE CONTROLLING NON-BANKRUTPCY U.S. IMMIGRATION LAW PUBLIC REGULATORY SCHEME, 8 USC §1324b, AS URGED BY PETITIONER

Bankruptcy Court's jurisdiction over the adversary proceeding and subsequent appellate affirmations are legally barred by the non-existence of an 8 USC §1324b Article III Court Enforcement Decree constituting the prerequisite debt obligation necessary for Bankruptcy Court's lawful subject matter jurisdiction.

That this essential jurisdictional requisite was not satisfied on April 6, 2004, the date of adversary-employer's filing its bankruptcy proceeding -- nor could it ever be subsequently satisfied -- unequivocally demonstrates the meritlessness, fraud and frivolity of adversary-employer's bankruptcy proceeding and underscores the Courts' deprivation of all

due process rights owed defendant Petitioner, who has made ongoing strenuous written and verbal jurisdictional objections and begged the Courts' consideration of the plain unambiguous language of the controlling, non-bankruptcy regulatory requisites of 8 USC §1324b, which need only be read to be obvious.

The duty of a Court to address subject matter jurisdiction is foremost and obligatory:

> ...it is appropriate to restate certain basic principles that limit the power of every federal court. Federal courts are not courts of general jurisdiction; they only have the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto. See, e.g. *Marbury v. Madison*, 1 Cranch 137, 173-190(1803). For that reason, every federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also the jurisdiction of lower courts in case under review...[10]

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[10] *Bender v. Williamsport Area School District* (US 1986) 89 LED2d_106 S Ct 1326. Because this argument attacks the lower court's subject matter jurisdiction, we have not only jurisdiction but are obligated to do so. *See Things Remembered, Inc. v. Petrarca*, 516 U.S.

Here, rather than afford this *pro se* defendant Petitioner the non-discretionary duty of applying the controlling statute to insure subject matter jurisdiction, these Courts deferred to the *say-so* of counseled adversary-employer as to the existence of a valid and subsisting 8 USC §1324b debt obligation against Petitioner, in allowing and affirming this non-creditor's "*willful and malicious*" adversary proceeding.

THE PANEL SUPPRESSED SUBSTANTIAL EVIDENCE OF THE NON-EXISTENCE OF ANY 8 USC §1324b MONETARY LIABILITY/DEBT OBLIGATION AGAINST PETITIONER AS DETERMINED BY THE COURT OF EXCLUSIVE AND FINAL JURISDCITION

Petitioner provided the Courts with copies of both the controlling 8 USC §1324b regulatory scheme and the certified docket of her 8 USC §1324b Petition for Review,

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124, 131 n.1 (1995) Ginsburg, J., concurring) citing *Mansfield, C. & L.M. R. Co. v. Swan*, 111 U.S. 379, 382 (1884)); *in re Celotex Corp.*, 124 F. 3d 619, 625 (4th Cir.).

together with the Second Circuit's non-money mandate letter:

> ...THERE IS NO 'MONEY JUDGMENT' ENTERED BY THIS COURT AGAINST YOU [PETITIONER].[11]

This Respondent bankruptcy review panel's Summary Order clearly indicates this panel's suppression of threshold material evidence of their own Court's 8 USC §1324b(i) immigration regulatory panel's non-money judgment -- supported by the letter and docket of the panel of original jurisdiction in the underlying immigration employment discrimination matter -- enforcing Petitioner's contention of her non-monetary liability and Bankruptcy Court's non-jurisdiction over the non-creditor's adversary proceeding. Thus, this bankruptcy panel's newly minted order is tantamount to an illegal, unfounded, highly prejudicial departure from fundamental principals of due process, which substantively extinguishes

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[11] *Supra*. ftn. 6.

Petitioner's Constitutional guarantees and rights protected under both 8 USC §1324b and the Bankruptcy Code.

PETITIONER HAS A CLEAR AND INDISPUTABLE DUE PROCESS RIGHT TO RESTORE HER ANTE ADVERSARY PROCEEDING STATUS QUO: NON-MONETARY LIABILITY UNDER 8 USC §1324b

8 USC §1324b (i)(2) plainly and unambiguously states:

> Upon the filing of the record with the Court [as was done with the Second Circuit in Petitioner's Petition for Review] the jurisdiction of the court shall be exclusive and its [2005 non-monetary] judgment shall be final....

Here, rather than afford defendant Petitioner the exclusivity and finality of her non-monetary liability unquestionably established in 2005 by the 8 USC §1324b immigration regulatory panel of exclusive jurisdiction, these lower Courts, together with this panel, usurped jurisdiction and authority and took things over the wall by creating a fictitious 8 USC §1324b debt obligation favoring this particular adversary-employer where, as a matter of law,

an 8 USC §1324b statutory debt obligation neither does nor can ever exist in favor of this adversary-employer and against this Petitioner.

> Where there is clearly no jurisdiction over the subject- matter and authority exercised is a usurped authority and when the want of jurisdiction is known to the judge, no excuse is permissible. *Dellenback v. Letsinger*, 889 F.2d 755 (7th Cir.1989) (quoting *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 20 L.Ed. 646 (1872)

THE MANIFEST PUBLIC POLICY WRONGS OF THIS MATTER ARE THE CONSEQUENCE OF THE COURTS' USURPATION OF JURISDICTION AND AUTHORITY BY INTERPOSING THEMSELVES INTO U.S IMMIGRATION LAW'S PUBLIC REGULATORY SCHEME (8 USC §1324b), WHICH ILLICIT ACTS CONSTITUTE AN UNWARRANTED IMPAIRMENT OF THE EXECUTIVE BRANCH IN REGULATING U.S. EMPLOYERS BY ENFORCING U.S. IMMIGRATION LAW AND PROTECTING U.S CITIZENS

> This Court has repeatedly recognized that where a court has exceeded the limitations on its power in a manner seriously effecting the public interest and a remedy through the appellate process is unavailable, it is appropriate for this Court to issue an extraordinary writ. See e.g. *De Beers Consolidated Mines Ltd. v. United States*,

325 U.S. 212 (19L45); *United States Alkali Export Ass'n v. United States* 325

Here, despite the non-existence of any 8 USC §1324b statutory debt obligation for purposes of bankruptcy, these Courts have nonetheless persisted in unlawfully interposing themselves in 8 USC §1324b's regulatory scheme by reviewing, publishing (on the Courts' public terminals) and attempting to enforce the non-self executing executive agency/ALJ order(s) at the bequest of this particular U.S. employer.

Despite this U.S. citizen Petitioner's having put the Courts on notice -- as early as 2004 in her written objections to the adversary proceeding -- that exclusive jurisdiction to review and/or enforce the non-self executing executive agency/ ALJ order(s) lie(s) with the Court of Appeals (8 USC §1324b(i)) and her putting the Courts on further notice that in 2005 the Second Circuit immigration

regulatory panel had previously spoken with exclusivity and finality on Petitioner's non-monetary liability, the only issue relevant to bankruptcy, the Courts ignored Congressional intent, public policy, the law, and this U.S. citizen Petitioner.

Contrary to these lower Courts, all other non-bankruptcy issues and unenforceable disputed agency orders arising from Petitioner's underlying immigration charge of employment discrimination and retaliation -- including the issue of the agency's acting outside the scope of its delegated authority in its adjudication of *pro se* complaints -- were never brought to these lower Courts by Petitioner, but are held in abeyance in this U.S. Supreme Court by dint of this Court's denial of Petitioner's Writ of Certiorari and Rehearing (8 USC §1324b(i)).[12]

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[12] *Elizabeth A. Kalil v. United States Department of Justice, Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer; Utica City School District, Intervenor* 04-623ag (2d. Cir. 2005) cert. denied, 06-37 S. Ct. (2006)rehearing denied (2006)

Thus, the Courts' broadcast of unenforceable disputed OCAHO agency orders (together with their issuance and publication of legally invalid bankruptcy orders and affirmations) serves no legitimate lawful purpose but instead serves only to allow this adversary-employer and these Courts to send a chilling message to any other whistle-blowing member of 8 USC §1324b's protected class (or any other *pro se* defendant) from coming forward with charges of employment discrimination and retaliation (and/or attempt to defendant oneself against frivolous litigation in bankruptcy) -- which were the bases of Petitioner's 2004 written request to seal the record of her former employer's unfounded, scandalous and defamatory bankruptcy proceeding.

The actions of this Bankruptcy Court and these Appeals Courts speak directly to the Courts' impermissable deregulation of this particular U.S. employer from

comporting with 8 USC §1324b's plain and unambiguous Article III Court enforcement requirement as the lawful requisite to establishing one's monetary liability/entitlement thereunder and instead have allowed this preferred counseled U.S. employer to circumvent the law in a Court clearly lacking jurisdiction. That these Courts have enabled these blatant illicit public policy transgressions to occur stinks of *mal fides* which, in the public interest, this Supreme Court can neither ignore, condone, excuse nor permit.

RELIEF SOUGHT

In consequence of the foregoing, Mandamus and Prohibition emerge as the sole viable remedy to right the outrageous wrongs done the public interest both in Immigration and Bankruptcy, to say nothing of the extinguishment of this *pro se* U.S. citizen's federally protected rights.

Petitioner prays this Court issue a Writ of Mandamus commanding this Second Circuit bankruptcy appellate review panel to exercise its mandatory legal duty to:

A) address the absolute subject matter jurisdictional bar to the 2004 bankruptcy proceeding (and its December 3, 2008 Summary Order Affirmation): the non-existence any statutory debt obligation given the documented non-existence of 8 USC §1324b's requisite

Article III Court enforcement decree naming adversary-employer beneficiary of a $52,958.40 Petitioner debt obligation;

B) comport with the 2005 8 USC §1324b(i) non-money mandate of the Second Circuit immigration regulatory panel in Petitioner's Petition for Review, *Kalil v. Department of Justice et al.* as memorialized in its letter to Petitioner:

> THERE IS NO "MONEY JUDGMENT" ENTERED BY THIS COURT AGAINST YOU [PETITIONER];[13]

C) expressly vacate and void its December 3, 2008 Summary Order and expressly cite the orders of both district and bankruptcy court (including its granting employer-adversary's request for a "*dismissal without prejudice*" as being null and void and without legal effect

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[13] *Supra.* ftn. 6

for lack of subject matter jurisdiction precisely because of the non-existence of any Petitioner 8 USC §1324b monetary liability/debt obligation[14]:

D) award Petitioner the costs of having to defend against the Court-embolden U.S. employer who relies on the Courts' unlawful advancement of Petitioner's fictional $52,958.40 U.S. immigration law liability to continue its prohibited retaliatory pursuit of Petitioner and the continuing oppression of Petitioner's rights; and

E) grant Petitioner all other relief this Court deems just and proper.

Respectfully submitted:

Elizabeth A. Kalil
Petitioner, *pro se*

[14] This is the declaratory relief Petitioner previously sought, is due, but has been withheld by these lower Courts.